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## Encyclopaedia of Islam, Second Edition

### Ḍarūra

(873 words)

, necessity (also *idṭirār*), in works of *fikh* has a narrow meaning when it is used to denote what may be called the technical state of necessity, and a wider sense when authors use it to describe the necessities or demands of social and economic life, which the jurists had to take into account in their elaboration of the law which was otherwise independent of these factors.

I. The state of necessity, whose effects recall those of violence, does not result from threats expressed by a person, but from certain factual circumstances which may oblige an individual, finding himself in a dangerous situation which they have brought about (shipwrecked, dying of hunger or thirst in the desert, for example), to do some action forbidden by the law, or to conclude a legal transaction on very unfavourable terms in order to escape from the danger which threatens him. The *Qurʾān* contains numerous verses which, directly or indirectly, legitimize on grounds of necessity certain acts which in principle are forbidden (II, 168; V, 5; VI, 119; XVI, 116). Ibn Nudjāyīm derived from this a maxim which became famous: *al-ḍarūrāt tubīḥ al-maḥẓūrāt*, which the Ottoman *Madjalla* (art. 21) reproduced literally and which may be translated: "Necessity makes lawful that which is forbidden".

The effects of the state of necessity of which the writers here fixed the conditions and limits, are more or less drastic according to the domain of *fikh* in which they occur.

a) In what concerns prohibitions of a religious character (the prohibition against eating pork or dead animals, or against drinking blood or other liquids regarded as impure, for example), it is admitted without difference between the Schools, that necessity legitimizes the non-

observance of these rules. It follows—and this is the opinion which has prevailed in doctrine—that one is even obliged to disregard them in a case of danger.

b) Most of the offences committed under the rule of necessity (for example, the theft of food, a ship-wrecked person's throwing into the sea the goods of another shipwrecked person in the same boat if it is too heavily laden) are excused and do not give rise to any form of punishment, although they do not cancel any civil responsibility. Three offences are never legitimized, let alone simply excused, whatever may be the circumstances in which they are committed (apart from legitimate defence). They are: murder, the amputation of a limb, or serious wounding likely to cause death; in these cases the evil inflicted is equal, if not superior, to that which the perpetrator of the offence has endeavoured to avoid, and there is no reason to favour him rather than the victim.

c) Jurists have not paid much attention to the effect of legal transactions (sale, lease) committed under necessity. They regard it only as a case of violence ( *ikrāh* ) to be decided according to the rules which govern violence in general. Nevertheless, in treatises on *fiqh* rules are found relating to a sale concluded in a state of necessity, when one of the parties (buyer or seller) exploits the circumstances which force the other to buy or sell. The Ḥanafīs call such a sale *fāsid* ; the writers of the other schools decree that the price should not be that so agreed, but the habitual price of something equivalent ( *thaman al-mithl* ).

II. Ḍarūra is used in a much wider sense by the commentators when they try to justify by practical necessity, solutions which the lawyers of the first 11 centuries of the Hidjra adopted by *istiḥsān* or *istiṣlāḥ* rather than by the rules of reasoning by analogy ( *ḳiyās* ). In these very numerous cases, the word is no longer synonymous with constraint, but signifies practical necessity, the exigencies of social and economic life. This is why other expressions such as *ḥādja* or *ta'āmul al-nās* or *maṣlaḥa* are frequently used. It is almost exclusively in Shāfi'ī law, which does not recognize *istiḥsān* , that these divergencies from *ḳiyās* had to be justified by reason of necessity, then taken in its narrower sense (al-Ghazzālī, *al-Mustasfā* , Cairo 1322, i, 284 ff.).

Ḍarūra in its wider meaning takes into consideration the existence in Muḥammadan law of rules and whole institutions which reasoning by strict analogy ( *ḳiyās* ) would have condemned, but which the “necessities” imposed, for instance contracts of hire and lease ( *idjāra* ) and of mercantile partnership ( *sharika* ), loan of money ( *ḳarḍ* ), the agricultural contract of *muzāra'a* , several kinds of sale including the *salam* sale, and a number of rules concerning details which have no other justification.

(Y. Linant de Bellefonds)

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On the "necessity" in theologica, see İDṬIRĀR.

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